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November 29, 1994

19075
RECORDATION NO. 1425
NOV 29 1994 10 11 AM
INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two (2) copies of a Lease of Railroad Equipment, dated as of April 27, 1993, a primary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177

The names and addresses of the parties to the enclosed document are:

Lessor: Residual Based Finance Corporation
Three First National Plaza
Suite 1240
Chicago, Illinois 60602

Lessee: Tucson Electric Power Company
P.O. Box 711
Tucson, Arizona 85702

A description of the railroad equipment covered by the enclosed document is:

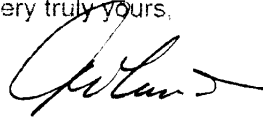
One hundred and eight (108) rotary dump gondola coal cars OFSX 84001 through OFSX 84110 (excluding 84045 and 84060).

Mr. Vernon A. Williams
November 29, 1994
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Alvord", with a stylized flourish at the end.

Robert W. Alvord

RWA/bg
Enclosures

RECORDATION NO. **19075** FILED 1425
NOV 29 1994 - 11:46 AM
INTERSTATE COMMERCE COMMISSION

Lease of Railroad Equipment dated as of April 27, 1993 between Tucson Electric Power Company, an Arizona corporation ("Lessee"), and Residual Based Finance Corporation, an Illinois corporation ("Lessor").

RECITALS:

A. Lessee desires to lease from Lessor the railroad cars described on Schedule A annexed hereto (hereinafter referred to, collectively, as the "Cars" and, individually, as a "Car").

B. Lessor desires to lease to Lessee the Cars.

NOW, THEREFORE, in consideration of the premises and of rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Cars to the Lessee upon the following terms and conditions:

1. CARS

A. **Delivery and Acceptance of Cars.** Lessee has received delivery of and accepted the Cars.

B. **Identification Marks.** The Lessee will cause each Car to continue to bear the identifying numbers and marks set forth in Schedule A, attached hereto. Upon request of Lessor and at Lessor's expense, Lessee will mark on each side of each Car, and will keep and maintain plainly, distinctively and conspicuously, in letters not less than one inch in height, the name of Lessor, followed by the word "Owner" or other appropriate words designated by the Lessor. Lessee will make any subsequent changes in such markings as required by Lessor at Lessor's expense. Lessee will not change the identifying number of any Car except as instructed by Lessor. At the expiration of the Lease, the Lessee shall assign the rights to the reporting marks then on the Cars if requested by Lessor.

Except as permitted in this Lease, Lessee will not allow any name on any Car. However, Lessee may mark the Cars with its or its affiliates names, initials or other insignia.

C. **Payment for Casualty Occurrences.** In the event that any Car shall be or become, in the reasonable opinion of Lessee, lost, stolen, confiscated, permanently rendered unfit for use or irreparably damaged (such event called a "Casualty Occurrence") during the term of this Lease, the Lessee shall notify the Lessor within 30 days of the determination by Lessee of a Casualty Occurrence. On the quarter-annual rental payment date next succeeding such notice, the Lessee shall pay to the Lessor the rental payment due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Car as of the date of such payment in accordance with the Schedule B annexed hereto. Once Lessee makes a Casualty Value payment on any Car, rental for that Car shall cease and the term of this Lease as to such Car shall terminate. Lessor shall, upon request of Lessee, deliver to Lessee a bill of sale (without warranty) for such Car, provided that if Lessee receives any proceeds from disposal of a Car in excess of the Casualty Value therefor, it shall pay such excess to Lessor.

Except as provided in this Lease, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Car.

The casualty value of each Car as of any quarter-annual rental payment date shall be that amount which is equal to the product of \$38,004.00 and that percentage as is set forth in Schedule B opposite such date. Lessor acknowledges that Schedule B shall not constitute a guarantee by Lessee of the value of the Cars at the end of the term of this Lease.

D. **Insurance.** Lessee agrees, that at all times that this Lease is in effect as to any Car, to maintain at its expense, comprehensive general liability insurance against claims arising from injuries to members of the public or damage to property of others and other risks against which Lessee customarily insures. Such policies shall include the Lessor as an additional insured as respects to its interests and the policy limits shall be not less than:

Bodily injury — \$10,000,000 per occurrence

Property Damage — \$10,000,000 per occurrence

Lessee shall also maintain property insurance for the Cars (including physical damage and loss insurance). Lessee shall cause Lessor to be

named loss payee pursuant to standard form loss payable endorsements as to any such property insurance. All of the foregoing policies may provide for Lessee to assume the initial \$1,000,000 in losses under such policies from any single occurrence. All of the foregoing policies shall be issued by insurers with a credit quality comparable to insurers generally insuring such risks for other public electric utility companies and Lessee shall, from time to time, upon Lessor's request, provide Lessor with such information as Lessee may have available to it concerning such insurers.

Lessee will provide to Lessor and to each assignee of Lessor, upon request, certificates of insurance for all applicable insurance policies and endorsements required hereby. Any net insurance proceeds as the result of insurance carried by the Lessee received by the Lessor in respect of Cars suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made payments pursuant to this Section without deduction for such net insurance proceeds, Lessor shall pay to the Lessee up to an amount equal to the Casualty Value with respect to a Car paid by the Lessee to the Lessor and any balance of such proceeds shall remain the property of the Lessor.

E. Return of Cars. At the end of the Term, or if this Lease in its entirety shall terminate prior to the expiration of the Term (as hereinafter defined) pursuant to Section 5 hereof, the Lessee shall deliver possession of the Cars to the Lessor. For the purpose of delivering possession of any Car or Cars to the Lessor as above required, the Lessee shall at its own cost, expense and risk: (1) place such Cars upon storage tracks of the Lessee as the Lessee may determine for a period equal to the lesser of three months (the "Storage Period") or Lessor's commencement of delivery of the Cars as instructed by Lessor; and (2) thereafter transport the same to any place on the lines of the Atchison Topeka & Santa Fe Railroad Company ("Santa Fe") or any other place within 500 miles of Tucson, Arizona, as directed by the Lessor, and upon arrival of the Cars at such point the same shall be deemed to be delivered to Lessor.

The delivery, storage (for the period set forth above) and transporting of the Cars shall be at the expense and risk of the Lessee. Delivery shall be complete upon arrival at the transport location designated by Lessor unless Lessor does not instruct Lessee as to

transport of the Cars prior to the expiration of the Storage Period, in which event delivery shall be deemed complete on the completion of the Storage Period where the Cars are then stored. During the Storage Period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Car, to inspect the same. Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person so inspecting.

For purposes of this Section only, Lessee appoints the Lessor as the agent and attorney of the Lessee, to demand and take possession of any Car in the name and on behalf of the Lessee from whomsoever is in possession of any Car(s) at the time.

F. **Possession and Use.** During the Term, so long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Cars in accordance with the terms of this Lease. The Lessee shall not assign, transfer or encumber its interest under this Lease in the Cars or any of them, without Lessor's prior written consent which shall not be unreasonably withheld in the case of an assignment of this Lease in its entirety, provided that the assignee assumes this Lease by agreement with Lessor, the original Lessee remains fully liable, and the assignee has senior debt rated investment grade or better or has generally accepted credit standing comparable to such an investment grade. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Cars, except to the extent permitted by this Lease. The Lessee, at its own expense will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor not related to the ownership of the Cars) upon or with respect to any Car, including any accession thereto, or the interest of the Lessor, or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises.

The Cars shall be used in a prudent manner consistent with all applicable laws solely in the use, service and manner for which the cars were designed. The Lessee shall not assign nor permit the assignment of any Car to service involving the operation and maintenance thereof

outside the United States of America. Lessee shall use the Cars for its needs in coal service and may sublease the Cars for the same purpose.

2. **RENT AND TAXES**

A. **Rentals.** The Lessee agrees to pay to the Lessor as rental for each Car subject to this Lease 52 consecutive quarter-annual payments, payable in arrears on January 1, April 1, July 1 and October 1 in each year commencing with July 1, 1993, (or if any such date is not a business day, on the next preceding business day), provided that the final rental payment shall be made on March 31, 2006. Each of the 52 quarter-annual payments as to each Car shall be in an amount equal to \$1,103.82 (and the first such payment shall not be prorated).

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available Federal funds for the account of the Lessor, as Lessor may from time to time direct Lessee, on the date upon which such payments are due and payable.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or the builder of the Cars or otherwise. Without limiting the generality of the foregoing, this Lease shall not terminate, nor shall the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of: (1) any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Cars from whatsoever cause, (2) any liens, encumbrances or rights of others with respect to any of the Cars, (3) the prohibition of or restriction against the Lessee's use of all or any of the Cars, (4) the interference with such use by any person or entity, this invalidity or unenforceability or lack of due authorization of this Lease, or (5) any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any

(subject, in the case of termination of this Lease pursuant to clause (II) of Section 5 hereof, to the reduction in the aggregate amounts payable as rent hereunder as a result of the excess present value calculation to be made thereunder as a result of such a termination) and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Cars except in accordance with the express terms hereof. Each rental payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever. To the extent Lessee believes it has a claim as to a defect in the Cars, Lessor shall assign to Lessee any claim it may have against the manufacturer thereof on account of such claimed defect.

B. Taxes.

All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein; provided, however, Lessor shall pay any privilege, use or sales tax required to be paid by Lessor under Arizona or New Mexico law and Lessee shall indemnify and reimburse Lessor upon demand for all such payments; further provided that at least 5 business days prior to the time that any such Arizona tax is due Lessee shall pay the

amount thereof to Lessor and furnish Lessor with all information required to do so together with the sums required to pay all amounts due in connection therewith. Lessor shall, upon request of Lessee, furnish Lessee with copies of all tax returns filed by Lessor as to the taxes which are the subject of indemnity or reimbursement from the Lessee. The Lessee will also pay promptly all impositions which may be imposed upon any Car or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Car free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Car; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Cars or notify the Lessor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor; provided, however, as to any privilege, use or sales taxes imposed by Arizona or New Mexico law, Lessee shall prepare all information necessary to prepare all reports necessary in connection therewith and Lessee shall furnish it to Lessor at least 5 business days prior to the due date for filing of such reports.

The Lessor, as the owner of the Cars, shall be entitled to such deductions, credits and other benefits (such deductions, credits and other benefits being in this Section 2 called "Tax Benefits") as are provided by the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder (hereinafter called the "Code") to an owner of property with respect to the Cars. Lessee acknowledges that the monthly rent payment provided for in this Section 2 is computed on the assumptions that (a) the Lessor will be entitled to depreciation

deductions, with respect to the full cost of each Car, allowed under the Code, as in effect on the date hereof (such deductions being referred to hereinafter as "Tax Benefits") and (b) all amounts includable in the gross income of Lessor with respect to the Cars will be treated as derived from or allocable to sources within the United States. Nothing herein contained shall be construed as an election by the Lessor to treat the Lessee as having acquired the Cars for any purpose.

Lessee agrees that neither it nor any other entity controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Class Life Deduction with respect to the Cars. Lessee represents, warrants and agrees that at all times during the term of this Lease, each Car will constitute property eligible for the Class Life Deduction.

If (A) the Lessor shall lose, or shall not have or shall lose the right to claim, any portion of the Tax Benefits with respect to any Car as a result of any one or more of the following events or circumstances:

(a) any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein or otherwise made in writing in connection herewith or therewith, shall prove to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part; or the Lessee shall take any action in respect of its income tax returns or otherwise which shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof) shall take any other action whatsoever which shall cause the loss of any portion of the Tax Benefits; or

(b) the failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or said related documents;

or (B) Lessee shall for any reason become entitled to any portion of the Tax Benefits; then Lessee shall pay the Lessor, as supplemental rent, upon written demand made by the Lessor at any time after such Benefit could have been claimed by the Lessor if it were allowable or by the Lessee if it becomes entitled thereto or, if claimed and then lost, at any time after payment of the tax attributable thereto, the following: in the case of paragraph (A) above, (i) an amount which, after deduction of all taxes required to be paid by the Lessor or its shareholders in respect of the receipt thereof under the laws of the United States or of any state or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of any other such taxes), shall be equal to the increased tax paid by the Lessor by reason of such loss plus (ii) the amount of any interest which may be assessed by the United States against the Lessor or its shareholders attributable thereto, plus (iii) in the event the Lessor or its shareholders shall pay the tax claimed (which payment Lessor shall furnish Lessee with notice thereof) and then seek a refund and the final determination of such claim shall be adverse to the Lessor or its shareholders, interest on the amount of the tax paid attributable to the Benefit disallowed by such claim, computed at the rate of 12% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provision of this Section 2.B; and, in the case of (B) above, without duplication of any payment made by Lessee pursuant to (A) above, the amount of any savings in taxes accruing to Lessee by reason of its entitlement to such Tax Benefits.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Section 2.B, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee; provided that such liability shall terminate 3 years after the expiration of the Term, provided that no claim has been raised by any governmental

entity prior to such time which has not been finally determined or settled.

C. Interest on Overdue Rentals. Any nonpayment of Rental due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to 1.5% per month of the overdue rentals for the period of time during which they are overdue or such lesser amount as may be legally enforceable. However, no interest shall apply if Lessee cures any nonpayment within the Cure Period (as hereinafter defined).

D. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered by hand, when deposited in the United States registered mail, first-class postage prepaid, or when received by facsimile, in each case addressed as follows:

(1) if to the Lessor, at

Three First National Plaza
Suite 1240
Chicago, Illinois 60602
Telecopy: (312) 726-3690

(2) if to the Lessee, at

Post Office Box 711
(3950 East Irvington Rd., in the case of hand delivery)
Tucson, Arizona 85702 (85714, in the case of hand delivery)

ATTN: Dave Bennett, Manager, Fuels Department
Telecopy: (602) 571-4002

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

3. **TERM**

A. **Term of Lease.** The term of this Lease as to the Cars shall begin on the 27th day of April, 1993 and shall terminate on the date on which the final quarter-annual payment of rent in respect thereof is due pursuant to this Lease (the "Term").

4. **DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS; MAINTENANCE AND INDEMNIFICATION**

A. **Disclaimer of Warranties.** THE LESSEE LEASES THE CARS "AS-IS, WHERE-IS." THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE CARS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE CARS FOR ANY PARTICULAR PURPOSE OR AS TO THE CARS OR ANY COMPONENT THEREOF, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

B. **Compliance with Laws and Rules.** The Lessee agrees, for the benefit of the Lessor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Car) with all laws of the jurisdictions in which its operations involving the Cars may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Cars, to the extent that such laws and rules affect the title, operation or use of the Cars, and in the event that such laws or rules require any alteration of any Car, or in the event that any equipment or appliance on any such Car shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Car in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor under this Lease.

C. **Maintenance.** The Lessee agrees that, at its own cost and expense, it will maintain and keep each Car in (1) good condition and repair, and (2) in efficient working order, ordinary wear and tear resulting from proper use thereof alone excepted. Lessee will maintain the Cars as acceptable for unrestricted use under load in interchange service in conformity with the AAR Interchange Rules and operable in conformity with the requirements of any other governmental or non-governmental agency having jurisdiction over the operation, safe condition, maintenance or use of the Cars. The Cars shall be delivered to Lessor in the condition required pursuant to the preceding sentences of this paragraph C at the expiration of this Lease with respect to such Cars and free of all AAR reparable conditions and commodity accumulations and deposits. Lessee will not, and Lessee will not allow any third party to, alter materially the physical structure of any of the Cars without Lessor's prior written consent. Lessor shall not unreasonably withhold consent to any such modifications or additions to the Cars so long as the value and utility of the Cars are not impaired. Any modifications, additions, parts installed or replacements made by Lessee upon any Car shall be considered accessions to such Car and title thereto shall be immediately vested in Lessor. Any modifications or additions to the Cars made by Lessee and not required by this Lease which are readily removable from the Cars without causing damage to the Cars, may be removed by Lessee prior to redelivery thereof to Lessor.

D. **Indemnification.** The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the performance of this Lease, the use, operation, condition, delivery, storage or return of any Car or any accident in connection with the operation, use, condition, possession, storage or return of any Car resulting in damage to property or injury or death to any person. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease, except that such indemnities shall not pertain to any occurrence with respect to a Car after the same have been redelivered to Lessor in accordance with the terms hereof.

E. **Finance Lease.** This is a "finance lease" as such term is defined in Section 2A-103 of the Uniform Commercial Code as in effect in the State of Illinois on the date hereof.

5. **DEFAULT AND REMEDIES**

If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

(a) Lessee shall fail to pay any sum required to be paid by Lessee and such failure shall continue for a period of 5 Business Days (the "Cure Period") after notice thereof from Lessor;

(b) Lessee shall fail to carry out and perform any of the obligations on its part to be performed under this Lease and such failure shall continue for a period of 30 calendar days after receipt by Lessee of notice from Lessor thereof, or any representation or warranty made by Lessee herein or in connection herewith shall be misleading or false in any material respect as of the date made;

(c) any proceedings for any relief under any bankruptcy or insolvency law or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension shall be commenced (i) against Lessee and an adjudication or appointment is made or order for relief is entered, or such proceeding remains undismissed for a period of 180 days, or (ii) by Lessee; or

(d) the Lessee voluntarily or involuntarily dissolves or makes an assignment for the benefit of creditors or applies for or consents to the appointment of a custodian, trustee or receiver for the Lessee or for the major part of its property;

then, in any such case, the Lessor may at its option: (I) proceed by appropriate court action or actions either at law or in equity, to

enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach hereof; or (II) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Cars shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Cars may be and take possession of all or any of such Cars and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Cars for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Car, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Car which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Car over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Car during such period, such present value to be computed in each case on the basis of the "Discount Rate" (as hereinafter defined), compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental. The term "Discount Rate", as used herein, shall mean that rate per annum in effect on the date of termination of this Lease which is equal to 1% plus the rate most recently announced by Citibank, N.A. as its prime, base, reference or similar rate for commercial loans, or if such rate is not then available, the rate most recently published in the "Money Rates" section of the Wall Street Journal as the "Prime Rate".

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies provided in this Section 5, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. If Lessor shall take possession of the Cars pursuant to this Section it shall give Lessee an opportunity to promptly remove any coal stored in the Cars.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

6. **REPRESENTATIONS AND WARRANTIES**

Lessee hereby represents and warrants to Lessor that:

- A. The Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of Arizona with adequate corporate power to enter into this Lease;
- B. This Lease has been duly authorized, executed and delivered by the Lessee and constitutes the valid, legal and binding agreements of the Lessee, enforceable in accordance with its terms;
- C. The entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound;
- D. Except as the same have been obtained, no approval is required from any public regulatory body with respect to the entering into or performance of this Lease; and

E. No mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Cars or in any manner affects or will affect adversely the Lessor's right, title and interest therein; provided, however, that such liens may attach to the rights of the Lessee hereunder in and to the Cars.

Lessor hereby represents and warrants that:

A. The Lessor is a corporation legally incorporated, validly existing and in good standing under the laws of Illinois with adequate corporate power to enter into this Lease;

B. This Lease has been duly authorized, executed and delivered by the Lessor and constitutes the valid, legal and binding agreements of the Lessor, enforceable in accordance with its terms; and

C. The entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessor is a party or by which it may be bound.

7. **MISCELLANEOUS**

A. **Annual Reports.** On or before March 31 in each year, commencing with March 31, 1994, the Lessee will furnish to Lessor an accurate statement (1) setting forth as at the preceding December 31, the amount, description and numbers of all Cars then leased hereunder, the amount, description and numbers of all Cars that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request and (2) stating that, in the case of all Cars repainted or repaired during the period covered by such statement, such Cars bear the numbers and the markings required by this Lease. The Lessor shall have the right by its agents, to inspect the Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

B. **Assignment.** This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be

under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of Lessor and its assigns. Whenever the term Lessor is used in this Lease it shall also apply and refer to each such assignee of the Lessor. Lessee may assign this Lease without Lessor's consent to any Affiliate of Lessee provided that Lessee shall remain liable hereon. The term "Affiliate" as used herein shall mean any corporation wholly-owned by Lessee's or Lessee's parent. Lessee may assign this Lease to any non-Affiliate with Lessor's consent.

C. **Recording.** The Lessee will take such action as Lessor may reasonably request to assist Lessor in causing this Lease, and any assignment hereof, to be filed and recorded with the Interstate Commerce Commission in accordance with the Interstate Commerce Act. The Lessee will from time to time (subject to Lessor's payment of any costs related to preparation and filing of the same) acknowledge, execute and deliver, whenever required any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to Lessor's reasonable satisfaction, of the Lessor's interest in the Cars, or for the purpose of carrying out the intention of this Lease (e. g., UCC financing statements, a memoranda of this Lease for filing with the ICC, and statements of car marks and numbers). The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Cars or the leasing thereof to the Lessee; provided that with respect to any tax imposed by the State of Arizona and any sales or use tax imposed by the State of New Mexico, Lessor shall prepare and file such returns if Lessee shall furnish Lessor the information required to do so together with the sums required to pay all amounts due in connection therewith.

D. **Severability, Effect and Modification of Lease.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Cars and supersedes all other agreements, oral or written, with respect to the Cars. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

E. **Execution.** This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Though this Lease is dated as of April 27, 1993; for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

F. **Law Governing.** The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois.

G. **Eminent Domain.** In the event that during the term of this Lease the use of any Car is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

H. **Financing Arrangements.** Lessee acknowledges that Lessor may in the future seek financing for or to sell the Cars and to grant to the Lease Assignee (as hereinafter defined) providing such financing both an assignment of this Lease and a security interest in the Cars. In connection with such financing or sale, Lessee agrees to use reasonable efforts to cooperate with Lessor upon Lessor's reasonable request. It is understood and agreed that Lessor or any Lease Assignee may assign this Lease with respect to some or all of the Cars to any security trustee, secured party or owner of such Cars (each herein a "Lease Assignee"). Upon delivery of a notice of assignment to Lessee, Lessor as used herein shall mean such Lease Assignee. Lessee shall consent to and acknowledge in writing, upon receipt of notice of assignment, such assignment of this Lease by Lessor or any Lease Assignee; provided, that any such consent and/or acknowledgment shall not in any manner

increase or change the rights, obligations, duties or legal position of the Lessee. Lessor agrees that the rights of any Lease Assignee shall be subject to all the terms and conditions of this Lease. Each Lease Assignee shall agree that the rights of any subsequent Lease Assignee shall also be subject to all the terms and conditions of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

RESIDUAL BASED FINANCE CORPORATION

BY: 

ITS: PRES.

TUCSON ELECTRIC POWER COMPANY

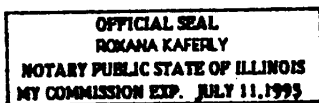
BY: 

ITS: Senior V.P. and C.O.O.

THIS IS COUNTERPART NUMBER 2 OF 4 SERIALY NUMBERED, MANUALLY EXECUTED COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS LEASE CONSTITUTES CHATTEL PAPER UNDER THE UNIFORM COMMERCIAL CODE, NO SECURITY INTEREST, AND NO RIGHT, TITLE OR INTEREST IN THIS LEASE, MAY BE EFFECTED BY THE TRANSFER AND POSSESSION OF ANY COUNTERPART OTHER THAN COUNTERPART NUMBER ONE.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 27th day of April, 1993, before me personally appeared Vincent A. Kolber, to me personally known, who, being by me duly sworn, says that he is President of Residual Based Finance Corporation, that the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



[Signature]
Notary Public

My commission expires July 11, 1993

STATE OF ARIZONA)
) SS
CITY OF Tucson)

On this 27th day of April, 1993, before me personally appeared Kevin Joyce, to me personally known, who, being by me duly sworn, did say that he is the S.V.P. & COO of Tucson Electric Power Co., an Arizona corporation, and that the foregoing instrument was signed on behalf of said association by authority of its Board of Directors, and said Kevin Joyce acknowledged said instrument to be the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Barbara Hartline
Notary Public

[SEAL]

MY COMMISSION EXPIRES 09-30-96

SCHEDULE B

TEP Casualty Value Schedule



<u>Payment Date</u>	<u>% of Original Unit Cost</u>
July 1, 1993	89.07%
October 1, 1993	88.84%
January 1, 1994	88.38%
April 1, 1994	87.81%
July 1, 1994	86.70%
October 1, 1994	86.57%
January 1, 1995	85.90%
April 1, 1995	85.19%
July 1, 1995	84.46%
October 1, 1995	83.69%
January 1, 1996	82.88%
April 1, 1996	82.03%
July 1, 1996	81.15%
October 1, 1996	80.24%
January 1, 1997	79.28%
April 1, 1997	78.29%
July 1, 1997	76.75%
October 1, 1997	76.17%
January 1, 1998	75.06%
April 1, 1998	73.89%
July 1, 1998	72.69%
October 1, 1998	71.43%
January 1, 1999	70.14%
April 1, 1999	68.79%
July 1, 1999	67.40%
October 1, 1999	65.96%
January 1, 2000	64.46%
April 1, 2000	62.92%
July 1, 2000	61.32%
October 1, 2000	59.67%
January 1, 2001	59.41%
April 1, 2001	59.15%
July 1, 2001	58.92%
October 1, 2001	57.45%
January 1, 2002	55.51%
April 1, 2002	53.50%
July 1, 2002	51.42%
October 1, 2002	49.26%
January 1, 2003	47.03%
April 1, 2003	46.97%
July 1, 2003	46.65%
October 1, 2003	46.19%
January 1, 2004	43.56%
April 1, 2004	40.85%
July 1, 2004	38.03%
October 1, 2004	35.12%
January 1, 2005	32.11%
April 1, 2005	31.37%
July 1, 2005	30.63%
October 1, 2005	28.41%
January 1, 2006	26.14%
April 1, 2006	23.83%


District of Columbia : SS

I, ROBERT W. ALVORD, being duly sworn, do hereby certify that the "Lease of Railroad Equipment," dated as of April 27, 1993 between Tucson Electric Power Company and Residual Based Finance Corporation consisting of twenty-three (23) pages, is a true and complete copy of the original thereof.



ROBERT W. ALVORD

Subscribe and sworn to before me this 29th day of November, 1994.


NOTARY PUBLIC, D.C.

My Commission expires:

7-14-98

SCHEDULE A

Description of Cars

108 one hundred- ton rotary dump gondola railroad car manufactured by Ortner Freight Car Company bearing the following marks:

OFSX 84001-84110 (excluding car numbers 84045 and 84060)